Supreme Court, U.S.
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No. 06-

IN THE

Supreme Court of the United States

JOSEPH KOFOED,

Petitioner,

v.

STEVEN SHIPRACK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner as per Oregon constitution rights, filed a state defamation claim against a union representative who in turn claimed complete preemption based on an affirmative defense, and qualified privilege is an affirmative defense.

Why would the court need to interpret the CBA to evaluate the existence of a privilege when the complete preemption doctrine does not abrogate the standard rule that a defense of preemption does not create a federal jurisdiction?

Does overlooked controlling case law set new controlling case law precedent?

IN THE

SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

The unpublished Memorandum Order of the United States Court appears at Appendix A. The District Court Opinion and Order appears at Appendix B. The State of Oregon Complaint appears at Appendix D.

STATEMENT OF JURISDICTION

The date the United States Court of Appeals decided petitioner's case was August 29, 2006. The date of Petition for Rehearing order denial was November 13, 2006 (App. C), The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Oregon Constitution, Bill of Rights, Article 1, Section 10 provides:

> "No court shall be secret, but justice shall be administered, openly without purchase, completely without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation."

STATEMENT OF THE CASE

For nonredundancy reasons, please refer to Appendix D which is the original Oregon complaint based upon right to do so under the Oregon Constitution Rill of Rights.

Beyond Petitioner's Oregon complaint in 2004, an attorney proceeded until the final order of the United States District Court. The appeal to the United States Court of Appeals, Ninth Circuit, was proceeded with the University of Washington School of Law as part of the Ninth Circuit Pro Bono Program. This era terminated when the petition for rehearing Order was filed.

Defamation is clearly not a negotiable collective bargaining agreement item. Petitioner filed his Oregon complaint in the parameters of an independent violator of defamation amidst outside the scope of CBA involvement.

REASONS FOR GRANTING THE PETITION

Controlling case law is overlooked. In *Balcorta v. Twentieth Century-Fox Film Corp.*, 1102 (9th Cir. 2000), the Court clearly stated that "the 'complete preemption' doctrine does not abrogate the standard rule that a defense of preemption does not create federal question jurisdiction." *Id.* at 1107 n.7 (emphasis added).

Cramer v. Consolidated Freightways, Inc., 255 F.3d 683 (9th Cir. 2001) was solely based on protections afforded them under state law. The Court therefore concluded that the defendant could not invoke federal jurisdiction merely by pointing to terms of a collective bargaining agreement that arguably provided a defense to the plaintiff's claims. *Id.* at 694.

"Must be read as it is written", in addition to the U.S. Supreme Court being incumbent to read with full credit to its language was fully anchored in *United States v. Price, et al.*, 383 U.S. 787 as should all courts.

The Ninth Circuit case law regarding complete preemption were either overlooked or misapprehended with full credit to the language of Balcorta and Cramer. The reason for granting the petition is that controlling case law must be read a it is written.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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